

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

NOV 13 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.622(b),)

Table of Allotments,)

Digital Television Broadcast Stations)

(Harrisburg, Pennsylvania))

MM Docket No. 01-208

RM-10205

To: Chief, Video Services Division

ORIGINAL

REPLY COMMENTS

Harrisburg Television, Inc. ("Harrisburg Television"), licensee of television station WHTM-TV, NTSC Channel 27, Harrisburg, Pennsylvania, by its undersigned attorneys, hereby submits its Reply Comments in the above referenced rulemaking proceeding. In the Notice of Proposed Rulemaking ("NPRM") in this proceeding, the Commission proposes the substitution of Channel 10 for Channel 57 as the DTV channel assigned to WHTM-DT, such that the DTV Table of Allotments would be amended as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Harrisburg, Pennsylvania	4, *36, 57	4, 10, *36

In response to the NPRM, the Commission received comments from NBC Subsidiary (WCAU-TV), L.P. ("NBC"), permittee of WCAU-DT, Philadelphia, Pennsylvania, and SJL Northeast License Subsidiary, LLC ("SJL"), permittee of WTAJ-DT, Altoona, Pennsylvania. NBC requests that the Commission place a condition on the grant of Harrisburg Television's proposed amendment to the DTV Table of Allotments, and SJL requests that the

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Commission deny Harrisburg Television's request. However, as demonstrated below, these comments are without merit and should not preclude the Commission from granting the proposed change to the DTV Table of Allotments for Harrisburg Television.

In its comments, NBC requests that the FCC impose a condition on Harrisburg Television such that WHTM-DT operating on DTV Channel 10 must accept "any separate or cumulative interference that may in the future be caused by a maximized WCAU-DT operation."¹ NBC concedes that WHTM-DT on Channel 10 will not cause any impermissible interference to WCAU-DT, either at its current power level or at a maximized power level.² Nonetheless, NBC requests that a condition be imposed on the WHTM-DT channel change because it is theoretically possible that after the completion of the digital television transition, WHTM-DT on channel 10 might receive cumulative interference in excess of 10 percent from a maximized WCAU-DT operating on Channel 10 in combination with possible interference caused by other unnamed DTV facilities.³ Therefore, NBC requests that if the Commission is otherwise inclined to grant Harrisburg Television's proposal to change DTV channels, the grant should be conditioned upon WHTM-DT's acceptance of any interference from WCAU-DT, whether measured independently or in concert with hypothetical interference caused by other maximized DTV facilities, after the digital television transition.⁴

NBC cannot and indeed does not provide any legal precedent in support of the imposition of such a condition on Harrisburg Television. In fact, it is well established that when a proposal to amend the DTV Table of Allotments complies with the Commission's technical

¹ *Comments of NBC Subsidiary (WCAU-TV), L.P.*, MM Docket No. 01-208, at 3 (filed October 24, 2001).

² *See id.* at 2.

³ *See id.* at 2-3.

⁴ *See id.* at 3.

standards, and the proponent has identified sound public policy reasons to support its proposal, the proposed channel substitution is granted without further inquiry.⁵ Harrisburg Television in fact demonstrated, and NBC does not dispute, that its proposal to substitute Channel 10 for Channel 57 complies with the replication standards and the interference requirements of the Commission's rules.⁶ Harrisburg Television also identified several public policy justifications for its proposal, justifications that NBC does not challenge. Therefore, no further inquiry is required, and there is no basis upon which to place the condition proposed by NBC on Harrisburg Television's petition to change to DTV Channel 10.

The objections of SJL to the proposed channel change should be similarly dismissed. SJL is the licensee of WTAJ-TV, operating on NTSC Channel 10 in Altoona, Pennsylvania, and has been allotted DTV Channel 32 for its DTV operations.⁷ In its comments, SJL requests that the Commission deny Harrisburg Television's request to change to DTV Channel 10 pending adoption of procedures by which SJL can seek permission to operate WTAJ-DT on Channel 10 after the DTV transition period.⁸ SJL claims that the Commission's lack of a procedure by which SJL can pursue post-transition DTV operations on Channel 10,

⁵ See, e.g., *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Oklahoma City, Oklahoma)*, Report and Order, MM Docket No. 99-297 (June 6, 2001) (finding "no further examination of this issue is required" when interference measurements fell within the Commission's guidelines); *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Charlottesville, Virginia)*, Report and Order, MM Docket No. 00-240 (July 26, 2001) ("When proposals... comply with the Commission's technical standards, the proposed channel is substituted for the assigned channel and the DTV Table of Allotments is amended to reflect the channel change.")

⁶ See *Petition for Rulemaking of Harrisburg Television, Inc.*, MM Docket No. 01-208, at 2 (filed May 14, 2001); see also 47 C.F.R. §§ 73.623(c)(1), 73.625(a)(2000).

⁷ See *Comments of SJL Northeast License Subsidiary, LLC*, MM Docket No. 01-208, at 1 (filed October 30, 2001).

⁸ See *id.* at 3.

while Harrisburg Television faces no such impediment, is unfair and arbitrary.⁹ Therefore, SJL claims, the Commission should deny Harrisburg Television's petition to amend the DTV Table of Allotments to operate on DTV Channel 10.¹⁰

Similar to the comments filed by NBC, however, SJL offers no legal authority for its argument that Harrisburg Television's petition to change its DTV channel allotment should be denied. In fact, the FCC explicitly rejected an argument similar to the argument made by SJL here – namely, that the possibility that a station might ultimately choose to operate its DTV facility on its NTSC channel justifies the denial of a petition to change DTV channels that otherwise meets the Commission's criteria.¹¹ SJL does not claim that its NTSC operations on Channel 10 will receive impermissible levels of interference, nor does SJL claim that its future DTV operation on channel 10 will receive impermissible levels of interference from WHTM-DT's proposed DTV operation on channel 10. Harrisburg Television has met all technical criteria required in a petition for channel change under the Commission's rules and has submitted sound public policy reasons to support its request, facts which SJL does not dispute.¹² For these reasons, the inquiry should be at an end.¹³ Whether the Commission's procedures for addressing applications for post-transition DTV facilities is unfair and arbitrary, as SJL claims, at best may be the subject of a separate rulemaking petition. However, it does not impact the petition of Harrisburg Television to change DTV channel allotments that is before the Commission today, and it should not preclude favorable action by the Commission on the petition.

⁹ See *id.* at 2.

¹⁰ See *id.* at 3.

¹¹ See *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Oklahoma City, Oklahoma)*, Report and Order, MM Docket No. 99-297 (June 6, 2001).

¹² See 47 C.F.R. §§ 73.623(c)(1), 73.625(a)(2000).

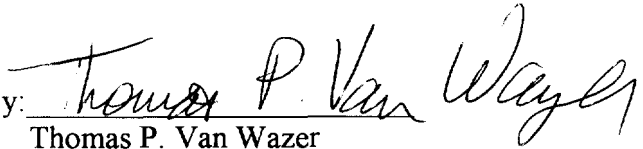
¹³ See *supra*, footnote 5.

CONCLUSION

For the foregoing reasons, Harrisburg Television respectfully requests that the Commission grant the proposed substitution of DTV Channel 10 for DTV Channel 57 as the digital television channel assigned to Harrisburg Television, Inc., Harrisburg, Pennsylvania.

Respectfully submitted,

Harrisburg Television, Inc.

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Dated: November 13, 2001

CERTIFICATE OF SERVICE

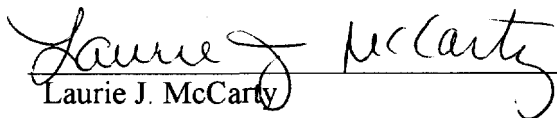
I, Laurie J. McCarty, a legal assistant in the law firm of Sidley Austin Brown & Wood hereby certify that on this 13th day of November, 2001, I caused to be served by hand delivery a copy of the foregoing **"Reply Comments"** on the following:

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